U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

September 19, 2016

BY ECF (REDACTED) AND FACSIMILE

The Honorable P. Kevin Castel
United States District Judge
Daniel Patrick Moynihan Federal Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: United States v. Gary Hirst, 15 Cr. 643 (PKC)

Dear Judge Castel:

By letter dated September 9, 2016, in response to defendant Hirst's letter dated September 8, 2016, the Government indicated that it would forego calling Shant Chalian as a witness at trial. In response to testimony elicited from Michael Hlavsa during cross-examination, however, the Government now seeks to call Mr. Chalian for a limited purpose that does not implicate the privilege issues previously raised in the defendant's September 8, 2016 letter.

1. Testimony of Shant Chalian Is Necessary To Correct Juror's Misimpression Regarding the Origin of the Warrant Calculation Document, GX 601

During cross examination, Mr. Tremonte asked Mr. Hlavsa to read for the jury a portion of GX 600-B in which Mr. Hirst states "I just sent you the calculation spreadsheet from Shant." (Tr. at 609: 11-14). Mr. Tremonte then followed up with questions to remind the jury that Shant Chalian worked for Gerova's outside counsel, Hodgson and Russ. (Tr. at 609: 15-16). If called to testify, however, Mr. Chalian would state that he did not perform the warrant calculation and did not create GX 601. Mr. Chalian's testimony is critical to rebut the inaccurate impression that Gerova's outside counsel performed that analysis, which the Government contends was instead performed by Hirst and his co-conspirators and purposely manipulated to result in the issuance of precisely 5,333,333 shares of Gerova stock to Ymer Shahini. The Government intends to limit Mr. Chalian's direct examination to only this narrow factual issue.

2. Mr. Chalian's Proposed Testimony Does Not Implicate Materials Over Which Gerova Has Asserted a Privilege

The Government requested that Hodgson and Russ conduct a search across all of their electronic materials relating to the Gerova engagement, including those withheld as privileged, for: (1) GX 601; and (2) any document or email dated between May 21, 2010 (the date of the exercise notice) and May 27, 2010 (the date of the issuance of 5,333,333 shares to Ymer Shahini).[1] A partner at Hodgson and Russ, Kevin Kearney, in conjunction with Information Technology staff, performed the requested searches. (See attached Affidavit of Kevin Kearney, Esq.). There was no record of GX 601, the warrant calculation document, on Hodgson and Russ's electronic system. Further, Mr. Kearney reviewed all of the materials between May 21 and May 27, 2010. He did not locate any documents concerning the calculation of the Shahini warrants. (Id.)

Given that Hodgson and Russ has confirmed through a diligent review of their electronic databases that they do not possess additional materials concerning the warrant calculation that could be used for purposes of cross-examination, the concerns articulated in the defendant's September 8, 2010 letter are not implicated by the limited testimony proposed.

Respectfully submitted,

PREET BHARARA
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[1] Although Hodgson and Russ also has boxes of hard copy documents from the Gerova engagement, those documents overlap with the electronic materials and the warrant calculation is an electronic document.